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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,680	09/19/2003	Kazutoshi Kaizuka	45144-00039	4095

7590 05/04/2004

Squire, Sanders & Dempsey L.L.P.  
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Los Angeles, CA 90017-5554

EXAMINER

LUU, TUYET PHUONG PHAM

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/664,680

Applicant(s)

KAIZUKA, KAZUTOSHI

Examiner

Teri P. Luu

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Notice of Informal App.

## **DETAILED ACTION**

### ***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by the abstract of JP 2001-112598A to Ishii et al. (Ishii).

Ishii discloses tourmaline powder molded in a granular state with a polymer as a bonding agent wherein the molding is filled in a pillow for use. A composition of molding contains 5%-89% weight of the tourmaline powder.

Claims 1 and 5 are rejected under 35 U.S.C. 102(a) as being anticipated by the abstract of JP 2003-227282 to Noh.

Noh discloses a pillow filler containing tourmaline material. The tourmaline material is made by mixing 2% to 5% weight of tourmaline particles with a synthetic raw resin material.

### ***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the abstract of JP 02003000399A to Suzuki et al. (Suzuki) in view of U.S. Patent No. 5,787,525 to Sugihara et al.**

With respect to claims 1 and 5, Suzuki discloses a pillow containing tourmaline powder mixed into at least any one of the pillow core body, the cover member and the cover material. However, Suzuki fails to disclose the specific amount of pillow core containing tourmaline powder of about 0.2% to 5% weight of the pillow core.

Sugihara discloses a layered fabric mattress formed from fibers containing very fine particles of tourmaline in the range of 0.05 to 7% by weight based on the unloaded fibers, preferably 0.05 to 2% by weight. Sugihara further discloses, at col. 3, lines 29-43, that “[w]hen the amount of the tourmaline particles is too small, the amount of active electrons emitted from the fibers would be too small so that the desired advantages in the present invention can not be accomplished...while no particular additional advantages can be obtained by increasing the amount thereof to exceed the above mentioned upper limit rather with an economical disadvantage along with a decrease in the fiber strength.” Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pillow core with tourmaline powder of about 0.2 to 5% weight so as to provide optimal results.

As concerns claims 2 and 6, Suzuki discloses that, in addition to tourmaline powder, zirconium compounds are also used. Sugihara further discloses that besides the tourmaline

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particles, the fibers are incorporated with fine particles of other inorganic materials such as alumina, magnesia, zirconia and the like known as far-infrared emitting material. (col. 3, lines 44-54) Therefore, Sugihara teaches that zirconia and alumina and magnesia are equivalent materials, and thus the substitution of alumina or magnesia for zirconium would have been within the knowledge of one skilled in the art.

As concerns claim 4, Suzuki also discloses a covering layer (2) surrounding an inner body (3).

**Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Sugihara as applied to claims 1 and 5 above, respectively, and further in view of the abstract to JP 2003-010022.**

Suzuki, as modified, discloses the claimed invention except for a magnet in the pillow core. JP '022 discloses a pillow core comprising a magnet held at the upper surface thereof such that “[b]lood circulation of the head and shoulder periphery is promoted and activation of cell can be achieved by the magnetic action of the held magnet.” Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pillow core with a magnet so as to promote blood circulation.

**Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Sugihara as applied to claim 5 above, and further in view of the abstract KR 2002-089066 to Noh.**

Suzuki, as modified, discloses the claimed invention except for the powder being incorporated into the pillow core by applying the powder to a surface of the pillow core. Noh discloses a method of manufacturing a pillow inside (i.e. cushion material) by mixing a liquid

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adhesive with tourmaline particles, spraying the mixture on the surface of the pillow inside/cushion material so that the tourmaline particle mixed adhesive is penetrated thus absorbed into the structure of the pillow inside/cushion material. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the tourmaline particles into the pillow core by applying the powder to a surface of the pillow core.

**Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Sugihara as applied to claim 5 above, and further in view of the abstract JP 2003-48937A.**

Suzuki disclose a method of improving the health of a person comprising the claimed steps except for the powder being incorporated into the pillow core by mixing the powder with the constituent materials used to manufacture the pillow core. JP publication '937 teaches a method in which the tourmaline powder is incorporated into the cushion by mixing the powder with the constituent material used to manufacture the cushion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to mix the tourmaline powder with the constituent material so as to evenly distribute and permanently incorporate the powder within the cushion.

***Allowable Subject Matter***

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can be best reached Monday-Friday from 6:30 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Heather Shackelford**, can be reached at **(703) 308-2978**.

Submission of your response by facsimile transmission is encouraged. Technology Center 3600's facsimile number for all official papers is **(703) 872-9306**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the  
Patent and Trademark Office (Fax No. \_\_\_\_\_) on     (Date)    

\_\_\_\_\_  
(Typed or printed name of person signing this certificate)

\_\_\_\_\_  
(Signature)

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If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **heather.shackelford@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free

tpl  
April 19, 2004



**TERI PHAM LUU**  
**PRIMARY EXAMINER**





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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/664,680	09/19/2003	Kazutoshi Kaizuka	45144-00039

Squire, Sanders & Dempsey L.L.P.  
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 801 S. Figueroa Street  
 Los Angeles, CA 90017-5554

CONFIRMATION NO. 4095  
 FORMALITIES LETTER

\*OC000000011966169\*

Date Mailed: ~~09/25/2004~~

## NOTICE OF INFORMAL APPLICATION

This application is considered to be informal since it does not comply with the regulations for the reason(s) indicated below. The period within to correct the informalities noted below and avoid abandonment is set in the accompanying Office action.

**Items Required To Avoid Processing Delays:**

The item(s) indicated below are also required and should be submitted with any reply to this notice to avoid further processing delays.

- A new oath or declaration, identifying this application number is required. The oath or declaration does not comply with 37 CFR 1.63 in that it:
- does not identify the residence (e.g., city and either state or foreign country) of each inventor.

Replies should be mailed to: Mail Stop Missing Parts  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

*H. Nguyen*  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY